IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5803 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI BAWABHAI TANDEL

Versus

DISTRICT MAGISTRTE

Appearance:

1. Special Civil Application No. 5803 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MRS HB PUNANI, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions

of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 23-3-2004 passed by the District Magistrate, Navsari and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP for the State. I have also perused the material on record. Learned advocate for the petitioner has mainly concentrated his arguments on the point of delay in passing the detention order. It is stated that the detention order has been passed on the basis of three prohibition cases registered against the detenu before Jalalpur Prohibition Station. Taking me through Annexure-C page 14 of the compilation, it is contended that last offence was registered against the detenu on 30-1-2004 while the order of detention was passed on 23-3-2004 and hence, there is a delay of more than two and half months in passing the order. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the last offence was registered against the detenu on 30-1-2004 while the order of detention was passed on 23-3-2004 and hence, there is a delay in passing the order. No affidavit has been filed by the detaining authority satisfactorily explaning for the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by

the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds on this point, learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 23-3-2004 passed against the detenu Ramanbhai Bawabhai Tandel is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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